Moreover, the *Diaz* majority paid no heed to the fact that the only reason David Diaz may have suffered harm to his "prospective" business relations was because he was serving a 37-year-to-life sentence that has withstood substantial appellate review. (420 F. 3d at 908, n. 1 (Gould, J., dissenting).)

But the Seventh Circuit found Ronnie Evans' status as convicted criminal to be of great significance:

> "The fact that this [Evans' arrest, conviction and incarceration] precluded him from seeking employment was merely a derivative of his criminal behavior, and does not constitute the deprivation of a property right. Therefore, looking to state law to define 'property' in this context does not help Evans' claim, for he is still unable to establish that he was injured in his 'business or property' based on the fact that he was denied the opportunity to seek work while incarcerated." *Evans*, 2006 U.S.App.LEXIS 264 at *36, fn. omitted.

In short, the Ninth Circuit has built an analytical framework that permits an application of federal law that not only undermines RICO's purpose but ensures an inconsistent use of this federal law from state-to-state.

## CONCLUSION

With the filing of *Evans* decision last month, there is an undeniable split between the circuits on this important issue of civil RICO standing, particularly as it applies to public entities. Petitioner Parks urges the court to vacate the denial of the petition for writ of certiorari and to enter a new order granting the petition.

DATED: February 2, 2006

Respectfully submitted,

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## CERTIFICATE OF COUNSEL

As counsel for petitioner Bernard Parks, I hereby certify that this petition for rehearing is presented in good faith, is not for delay, and is restricted to the grounds specified in Rule 44.2.

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*Bernard Parks*

Opposition Brief Unavailable for Filming at this Time